

Application Serial No. 10/669,457
Reply to Office Action dated August 24, 2005

REMARKS/ARGUMENTS

Initially, the Applicant would like to thank the Examiner for taking the time to discuss the outstanding Office Action issued in this case with the Applicant's representative during an interview conducted on November 14, 2005. During the interview, the Examiner and the Applicant's representative discussed each of the claims of the present application, particularly focusing on the § 112 rejection to claims 10-18 and the various § 103 rejections to claims 1-9 and 19-21.

On page 2 of the Office Action, the Examiner outlined a rejection under 35 U.S.C. § 112 rejecting claims 10-18. The Examiner argues that claims 10-18 are indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Claims 10-18 are drawn to the sub-combination of a retainer assembly for use in dividing and retaining items stored on a shelving unit in a refrigerator. As the structure of the refrigerator and shelving unit were recited in the preamble of the claim, with the body of the claim referring back to those limitations, the claims are seen to be in full compliance with 35 U.S.C. § 112, 2nd paragraph. However, in order to further prosecution of the present application, claims 10-18 have been canceled.

Claims 1-9 and 19-21 were rejected under 35 U.S.C. § 103 as being unpatentable over Jeziorowski (U.S. Patent No. 4,859,010) in view of Field (U.S. Patent No. 5,588,093) or, alternatively, Rankin, VI (U.S. Patent No. 6,464,089). The Examiner relies upon the Jeziorowski reference to teach a refrigerator having at least one shelving unit adapted to support items thereon. The Examiner correctly recognizes that Jeziorowski lacks a retainer assembly for securing items on the at least one shelving unit, with the retainer assembly including a divider element and a biasing member. In order to meet these missing claim limitations, the Examiner relies upon either Field or Rankin, VI which are directed to a merchandise display device and a pusher for a merchandise

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dispenser respectively. Initially, it should be noted that neither Field, Rankin, VI or Jeziorowski are at all concerned with securing items on refrigerator shelves to prevent the items from toppling when a refrigerator door is opened. Field and Rankin, VI are simply directed to mechanisms for urging items forward in a merchandise display after a selected item has been removed from the display. That is, both Field and Rankin, VI are concerned with ensuring a constant presence of items in a merchandise display and are not at all concerned with retaining items in a shelving unit on a refrigerator door.

As stated in the M.P.E.P. and as widely known in case law, the mere fact that prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests a desirability of the modification. As stated above, none of Jeziorowski, Field or Rankin, VI suggest any motivation for, or desirability of, retaining items in a shelf of a refrigerator door as proposed by the Examiner. As also stated in the M.P.E.P., it is impermissible to use the claimed invention as an instruction manual or blueprint to piece together the teachings of the prior art so that the claimed invention is rendered obvious. In the instant case, the Examiner is using impermissible hindsight to pick and choose among isolated disclosures in the prior art to duplicate the claimed invention. More particularly, the Examiner has combined two non-related prior art references directed to merchandising displays to modify a shelf for a refrigerator without any motivation taken from the known prior art. Regardless, in order to further the prosecution, the Applicant has agreed to amend claims 1 and 19 to recite that the divider separates the at least one shelving unit into first and second laterally spaced storage zones. During the interview, the Examiner agreed that this amendment would overcome the rejections to the prior art set forth in the outstanding Office Action.

Also during the interview, the Examiner and the Applicant's representative discussed the various distinctions that exist between the applied prior art and claim 3 as originally presented. That is, the Examiner argued that Field included a support arm that is directly, slidably supported by at least one upstanding wall of the shelving unit, relying

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on the structure indicated at 26 in the Field reference. However, the structure or clip shown at 26 is not slidably supported by an upstanding wall, let alone an upstanding wall of a shelving unit for a refrigerator. That is, the clip indicated at 26 merely fixedly retains a rear portion of the merchandise display device such that a forward portion 22 can be outwardly biased by an extensible member 10. Based on at least these discussed distinctions, it was agreed that placing claim 3 in independent form so as to include all the limitations of claims 1 and 2 as originally presented would be allowable.

The Applicant's representative also proposed amending claim 5 to indicate that the biasing member, in the form of a spiral spring, extends directly along a wall of the at least one shelving unit. The Examiner recognized that this limitation would distinguish the present invention from the prior art of record. Accordingly, claim 5 was amended to incorporate claim 1 as originally presented, as well as an additional limitation regarding the locating of the spring.

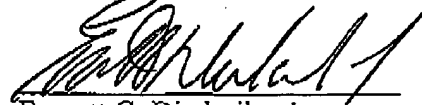
With respect to many of the dependent claims, the Applicant respectfully submits that none of the prior art, when taken singly or in combination, teaches various recited specifics, for example, slidably supporting a support arm on a front wall of a door pick-off bucket as recited in claim 4, the biasing element constituting a spiral spring that is attached to the at least one shelving unit as recited in claim 6, and attaching the biasing element through an opening in the shelving unit as required by claim 8. In the combination suggested by the Examiner, at best, the entire Rankin device would simply be dropped into a shelving unit such as in Jeziorowski and would not, as the Examiner suggests, form part of the a shelving unit itself so that the spring would extend through an opening thereof.

Based on the above remarks, and amendments to the claims, it is respectfully submitted that the present invention is patentably defined over the prior art of record such that allowance of all claims and passage of the application to issue is respectfully requested. If the Examiner should have any additional questions or concerns regarding

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this matter, he is cordially invited to contact the undersigned at the number provided below.

Respectfully submitted,



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